

MINUTES

Extraordinary Cost Fund for Special Education 2018 Interim Study Committee



Representative Mary Duvall, Chair
Senator Jim Bolin, Vice Chair

**Second Meeting, 2018 Interim
Thursday, July 26, 2018**

**Room 362 – State Capitol
Pierre, South Dakota**

The second meeting of the Extraordinary Cost Fund for Special Education Study Committee was called to order by Representative Mary Duvall at 8:30 a.m. in Room 362 of the State Capitol. A quorum was determined with the following members answering roll call: Representatives Dan Ahlers, Hugh Bartels, Lana Greenfield, Tom Holmes, Elizabeth May, Kyle Schoenfish, and Jamie Smith; Senators Ryan Maher, Jeff Monroe, Reynold Nesiba, and Jordan Youngberg; Senator Jim Bolin, Vice Chair; and Representative Mary Duvall, Chair.

Staff members present included Clare Charlson, Principal Research Analyst; Tamara Darnall, Chief Fiscal & Program Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Representative Greenfield, seconded by Representative Holmes, to approve the minutes of the Extraordinary Cost Fund for Special Education Study Committee meeting held on June 12, 2018. Motion prevailed on a voice vote.

Opening Remarks

Representative Mary Duvall, Chair, welcomed everyone to the meeting, gave a preview of the meeting, and thanked the LRC staff and the Department of Education staff for the work done in preparing for the meeting.

Senator Jim Bolin, Vice Chair, said the extraordinary cost fund for special education is the focus of this study committee. The committee needs to look at the original intent of the extraordinary cost fund and examine the factors that are putting pressure on the fund.

Follow-Up Information on Special Education Issues

Ms. Linda Turner, Director of Special Education Programs, Department of Education (DOE), gave a presentation addressing additional information the committee requested at the June meeting ([Document #1](#)). Ms. Turner explained the process for placing a student in special education. The six-step process begins with a referral requested by the parent or the school district. The next step is to obtain parental prior written notice (PPWN). The consent must be obtained in order to conduct an initial evaluation. The next step is the evaluation. Reports must be written and made available for every area evaluated.

Step four is determining eligibility. In determining eligibility, the school must have documentation in the file to support: prong 1 - a diagnosed disability; prong 2a - educational impact; and prong 2b - student requires specially designed instruction.

Step five is writing the individualized education program (IEP). The IEP is written by a team of people, and a number of special factors are taken into consideration. Step six is written parental notice of the evaluation. This must be sent to the parents every time any revisions are made to the plan for the student's education.

Senator Nesiba asked how long this process takes. Ms. Turner said once consent is received from the parent, the school has 25 school days to conduct an evaluation and then 30 days to meet with the team and write the IEP. South Dakota is always above 99% in the compliance rate for meeting these deadlines.

Senator Bolin asked if parents ever ask that their child not be placed in special education. Ms. Turner said the parent can at any time refuse to have a child take part in special education. There is nothing the school can do in that situation, but that does not happen very often.

Representative Greenfield asked how often the parents start the process. Ms. Turner estimated the split between parents' making the request and the school making the request is about 50/50.

Senator Bolin asked if there is a difference between mental health issues and special education. Ms. Turner explained that mental health issues may be considered an emotional disturbance. Special education does not just include academic support. There may be a need for other types of support as well.

Ms. Turner presented the data section of document #1. The number of special education students continues to increase. South Dakota's enrollment percentage is higher than the national average. Neighboring states percentages are increasing at a faster rate than South Dakota. In 2016, there were 20,312 special education students in South Dakota, with a total student enrollment of 134,253. This means 15.13% of South Dakota students were enrolled in special education. The national average for 2016 was 13.64% of students were enrolled in special education.

Ms. Turner presented the accountability process section of document #1, focusing on the monitoring activities. The Department of Education (DOE) reviews the school districts once every five years, unless a complaint is filed triggering an earlier review. The review includes validating the December count, certification and job duties of the staff, reviewing the comprehensive plans, and conducting staff reviews. The DOE writes a final report for each district. The district has one year to come into compliance. The five-year review cycle schedule is posted, and the school districts know when the review will be conducted.

Ms. Turner presented the results-driven accountability section of document #1. This section of the process was added recently. South Dakota is at 100% for compliance and 79.17% for results. The results percentage continues to improve. Compared to other states, South Dakota is doing very well. There are seventeen indicators used for measuring results. Some of the indicators are graduation, drop-out rate, performance on assessment, successful employment, and secondary education.

Representative Duvall asked if the federal government requires an extraordinary cost fund. Ms. Turner responded that the extraordinary cost fund is not required, but there must be a state maintenance of effort.

Senator Youngberg requested more information on when funding is requested from the extraordinary cost fund. Representative Smith said those funding requests are when students are affecting a school budget beyond what the school district was expecting. Representative Duvall said 25 school districts applied for funding from the extraordinary cost fund this year.

School District Roundtable

Mr. Jeff Simmons, Superintendent, Meade School District, said in small schools, one student can have a significant impact on the budget. The school may have to make accommodations in the school building or hire additional staff. When previously working at Roncalli High School in Aberdeen, Mr. Simmons said the school would have to turn some students away if there was not sufficient funding. Mr. Simmons said there are students with behavior issues so severe that the student cannot remain in the school. The Meade School District has several rural schools, and the special education teachers have to do a lot of travelling. Some districts can justify the cost of having a designated room for the special education students, but it is difficult to justify that room for just one or two students.

Mr. Simmons explained that if a student is suspended beyond ten days for behavior, there needs to be a manifest hearing about the behavior and if it is connected to a disability. The school has to provide the same services as if the student was in school by sending someone to them or paying for special services. An example of an extra cost student is a junior high student who needs to be placed out-of-district because of his behavior.

Representative May asked what affect the recent juvenile justice reforms have had on the Meade School District. Mr. Simmons said the intent of the reform was good, but the probation officers no longer have the same authority to hold the students accountable. Placement is not an option in this situation. The students return, and the school is responsible to work with the students without being provided the proper tools.

Representative Duvall commented that the impact of the recent juvenile justice reforms on the schools needs to be researched, but that is not part of the scope of this study committee.

Mr. Jamie Hermann, Superintendent, Kadoka School District, said the school district has not reached the maximum mil levy, but he is fearful the district will have to do that in the near future. The number of special education students in the school district remains stable with between 48 and 55 students. Recently there has been an increase in the number of out-of-district placements. There is a therapist on staff and that helps keep the costs down, but she is nearing retirement and that will most likely mean contracting for the work she does, which will come at a much greater cost. The school district does contract out for other additional staffing needs, such as the psychological staff. There are several rural schools in the district, so travel is factored into all the costs. It could be as much as one hour of travel time to reach one student. Travel is a big budget item.

Senator Bolin said geography is one thing to be considered when making recommendations; there needs to be some type of geographical consideration.

When asked what may lead to the need for funding from the extraordinary cost fund, Mr. Hermann said residential placement. Several years ago, the school district had no students in residential placement and now there are several. The term of the placement depends on the student's progress. One student was in placement for six months, another for three years.

In response to a question from Representative Ahlers, Mr. Hermann said the school district is just one student away from needing the extraordinary cost fund, but the district is not at the full mil levy, so they cannot apply for that funding until the mil levy is raised.

Ms. Rhonda Frederick, Special Education Director, McLaughlin School District, said of the 464 students in the school district, 96 of them are in special education. The school district does receive funding from the extraordinary cost fund. This year, the request from the ECF was \$83,000 less than last year. The amount requested is based on a year-to-year basis, and they have received the funding every time they have applied.

It costs the school district about \$60,000 a month for the special education program. This year there are nine students in disability level 3, and seven of those nine have autism. There are 79 students in disability level 1. There are nineteen early childhood students. Parents have become more proactive when realizing their child has some deficits. Early intervention is key to working with the child, even though it comes at a cost. The number of students in special education has decreased, but the number of higher level needs students has increased.

Travel is another big expense for the district, as well as contracting for staff. It costs \$800 - \$1,000 a day to have a psychiatrist come to the school, and the psychiatrist can evaluate only two students at the most in one day.

Ms. Frederick said that because the school district is so near the border, some of the students are from North Dakota. She added that she prefers the South Dakota process for evaluating students, as it is more specific to the students' needs.

Ms. Frederick said part of the struggle is finding the staff needed to care for the students. Costs do go down for those schools that have more in-house staff to work with the students. At McLaughlin, there is one qualified special education teacher, another teacher with whom the district contracts, and Ms. Frederick to care for all the special education students in the district.

Follow-Up Information on Federal, State, and Local Funding for Special Education

Ms. Tamara Darnall, Chief Fiscal & Program Analyst, presented a brief from 2014 titled, *Federal Funds Information for States: IDEA Full Funding Update* ([Document #2](#)). When Congress passed the Individuals with Disabilities Education Act (IDEA) in 1975, it committed to funding up to 40% of the per pupil expenditure for every student receiving special education services. Congress has never appropriated sufficient funds to reach that 40%. Table 1 of the brief shows where South Dakota is on the per pupil spending amount. There are bills currently in Congress to fully fund special education.

Ms. Darnall presented the *History of Special Education Data Analysis: Cost Per Disability* ([Document #3](#)). When a school receives special education funding it can only be used for special education. This document lists the amount each disability is funded.

Each year the school districts are required to report financial data for the most recent fiscal year to the DOE. The DOE uses that data along with the December child count to determine the average cost for each disability. This information can be found in *State Aid to Special Education Triennial Adjustment* ([Document #4](#)). This data is used to recalculate the allocations for special education every three years. The chart breaks down each category by cost and the number of students who fall under each category. The last chart in this document includes the IDEA deduction and the projected amounts for FY2018 and FY2019.

Committee members asked if the levels could be broken down even more to better address the different disabilities. Ms. Darnall explained that would greatly add to the complexity in preparing these calculations. Representative Bartels said if the levels were broken down more, the money would be more apt to get where it needs to go.

Ms. Darnall presented the *History of the Extraordinary Cost Fund* ([Document #5](#)). The extraordinary cost fund was introduced as a part of the state aid to special education funding formula that was implemented in 1997. This is not a separate fund but a set aside.

A focus group was established in 2011 to maintain the integrity of the fund and ensure that it remains sustainable. Information on that focus group's results can be found in document #5. The group suggested changing the calculations used, increasing the maximum allowed, and changing the fund from a percent to a set dollar amount

of \$4 million. The first time the funding requests exceeded the amount of funding appropriated was in fiscal year 2017. This trend continued into fiscal year 2018.

In response to a question, Ms. Darnall explained that the child count is done in December because of the timing. Reporting the counts at that time allows for the payments to be made in June.

Representative Ahlers said the Joint Committee on Appropriations has been requesting some agencies to conduct a Lean study and asked if the Department of Education would be willing to conduct a Lean study to analyze this process. Ms. Mary Stadick Smith, Interim Secretary, Department of Education, said she believes DOE would be willing to participate in that program.

Public Testimony

Mr. Tom Culver, Superintendent, Avon, distributed the special education cost analysis for the Avon school district ([Document #6](#)). Mr. Culver said the Avon School District has requested funding from the extraordinary cost fund every year since 2013. Avon's local effort and state aid for special education in 2017-18 was \$383,010.75. Avon's total in-district expenditures were \$360,422.97 and out-of-district expenditures were \$193,741.78. The school district does receive more state aid each year because of the severity of the students' disabilities, and that means the request to the extraordinary cost fund does decrease each year. There are 231 students in the school district and 16% of the students are on IEPs. Statewide 6.5% of the special education students have autism; 14.3% of the Avon special education students have autism.

Mr. Culver said of the out-of-district placements, three of the students pose a threat to the safety of the other students and the staff. Out-of-district placement is a last resort for the schools and explaining the situation to the parents is never easy. The cost of out-of-district placement continues to rise, and this small school district needs some help. Mr. Culver suggested that perhaps the Department of Education could negotiate costs between the providers and the schools; if the state could get involved in setting some of the rates it could really help.

Representative May asked if the recent juvenile justice reforms have had an effect on the school district. Mr. Culver gave an example of a student who received six months probation and that sentence did not change the student's behavior at all. Before the reforms, probation officers had some authority over the students. That is not the case since the reforms took effect in 2015.

Mr. Jerry Aberle, Northeast Services Cooperative (NESC), Hayti, said there are 23 school districts that are members of the NESC, and about 1100 special education students in those 23 school districts. The type of disabilities increasing the fastest are those based on behavioral issues. The most difficult to address are those based on medical needs. When one of the districts cannot meet the needs of a student, they look to the co-op for assistance. The biggest concern with some of the students is that they could harm other students or the staff.

Senator Youngberg asked for Mr. Aberle's thoughts on the reasons for the increased behavioral problems. Mr. Aberle said that, in his opinion, the constant interaction with on-screen devices, the meth problem, and lack of supervision are some of the reasons. A student who has had little structure in life is going to have a difficult time adjusting to the school setting.

Mr. Aberle was asked what could be done to address this growing issue. Mr. Aberle said there are five school districts in the NESC that access the extraordinary cost fund. Those schools do not complain about the ability to access the funds, but are more concerned about whether there will continue to be enough funding to meet all the requests.

Ms. Gail Eichstadt, Attorney for Disability Rights of South Dakota (DRSD), Pierre, said the DRSD is the federally mandated advocacy program for South Dakotans with disabilities and many of the clients are students with disabilities.

Senator Bolin asked Ms. Eichstadt to comment on Public Law 94-142, Education for All Handicapped Children Act, 1975. Ms. Eichstadt said it was a long struggle to get this passed through Congress. It is now known as the Individuals with Disabilities Education Act (IDEA). It is good that this act has been expanded to include more disabilities. Before the IDEA amendments were put in place in 1997, autism was not a disability category. Autism is not a medical problem, but rather a neurological problem. It is important that education takes care of each student's individual needs.

Committee Discussion

Senator Youngberg said he has been keeping a list of the things that can impact the Extraordinary Cost Fund; some of the things on that list are day-placement, residential placement, travel, staffing, out-of-district enrollments, and medical needs.

Representative Smith said the issues caused by the juvenile justice reforms in 2015 were mentioned by most of the testifiers, and the committee should research that further. Representative Duvall said she will talk to the Unified Judicial System and see if the staff there have any insights into this issue. Representative Holmes wondered if there would be a way to determine cost savings if probation officers had the same authority now that they had before the reforms.

Senator Nesiba said it would be helpful to have some bills drafted that the committee could discuss. It is also important the committee know the federal mandates to be better aware of what limits the state has regarding special education.

Representative Ahlers suggested reviewing SB15 from the 2013 session, which provided for expenditures for early learning services from the special education fund and revised certain provisions regarding state aid to special education. Representative Ahlers said that rather than make adjustments every three years, perhaps that should be done every two years.

Representative Schoenfish said the cost for out-of-district placement is a big issue for the schools and perhaps representatives from those institutions could be invited to talk to the committee about how the costs are determined.

Representative May said she would like to look at the capital outlay fund and the transferring of those funds.

Representative Greenfield said the committee needs to scrutinize the disability levels of special education; the levels are not specific enough. Representative Bartels agreed saying that breaking down the levels would allow for more accurate cost estimates. Representative Duvall added that there are some wide disparities within each level.

Senator Maher suggested a member of the Government Operations and Audit Committee or the Joint Committee on Appropriations should be on the extraordinary cost fund selection committee to allow for better legislative oversight. Ms. Stadick Smith said the membership for that committee is set by administrative rule.

Senator Bolin said the committee may want to take look at changing the name of the fund. There are some normal funds approved. The state must be sure the students with severe physical disabilities are cared for, but we also need to be sure no school district is just using this as an opportunity to receive additional funding. The budget

breakdown from the Avon School District is a fitting example of how to include all the significant information. Senator Bolin agreed with the idea of adding a legislator to the oversight committee.

Next Meeting

The next meeting of the Extraordinary Cost Fund for Special Education Study Committee will be held in Pierre on September 11, 2018.

Adjourn

A motion was made by Representative Ahlers, seconded by Representative May, that the Extraordinary Cost Fund for Special Education Study Committee be adjourned. The motion prevailed on a voice vote.

The committee adjourned at 1:45 p.m.